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UNITED PARCEL SERVICE, INC.  
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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 NICHOLAS STEPHENS

12 Plaintiff,

13 v.

14 UNITED PARCEL SERVICE, INC.;  
LIBERTY MUTUAL INSURANCE  
15 COMPANY, INC.

16 Defendants.  
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Case No.: 4:23-cv-06081-DMR

**DEFENDANT UNITED PARCEL  
SERVICE INC.'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS PLAINTIFF NICHOLAS  
STEPHENS' COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Hearing Date: January 11, 2024

Hearing Time: 1:00 p.m.

Dept.: 4

Judge: Hon. Donna M. Ryu

Complaint Filed: October 16, 2023

Trial Date: Not Yet Set

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:**

22 **PLEASE TAKE NOTICE** that on January 11, 2024 at 1:00 p.m. or as soon  
23 thereafter as the matter may be heard in Courtroom 4 of the above-entitled court,  
24 located at 1301 Clay Street, Oakland, CA 94612 before the Honorable Donna M. Ryu,  
25 Defendant United Parcel Service, Inc. ("Defendant") will, and hereby does, move the  
26 court to dismiss the action pursuant to Federal Rules of Civil Procedure ("FRCP")  
27 12(b)(6).  
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1 Defendant brings the Motion on the following grounds:

2 1. Plaintiff's negligence cause of action fails because Plaintiff has not  
3 alleged sufficient facts to state a claim.

4 2. Plaintiff's negligence cause of action also fails because Plaintiff's claims  
5 are barred by the workers' compensation exclusivity doctrine.

6 3. Plaintiff's negligence cause of action for also fails because Plaintiff's  
7 claims are preempted by Section 301 of the Labor Management Relations Act.

8 Defendant's Motion is based upon this Notice of Motion and the accompanying  
9 Memorandum of Points and Authorities, the Declaration of Robert D. Prine in support  
10 thereof, any oral argument as may be presented at the hearing, and all other papers,  
11 records, and pleadings on file in this action, as well as any additional evidence and  
12 argument as the Court may allow prior to, during, or after the hearing on this motion.

13  
14 Dated: November 29, 2023

DINSMORE & SHOHL LLP

15  
16 By: /s/ Robert D. Prine  
17 ROBERT D. PRINE  
18 Attorney for Defendant,  
19 UNITED PARCEL SERVICE, INC.  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

Plaintiff's Complaint must be dismissed because it fails to state a claim upon which relief may be granted. Specifically, the form Complaint fails to satisfy federal pleading standards. Further, the workers' compensation exclusivity doctrine and Section 301 of the Labor Management Relations Act also preempt Plaintiff's claim. For these three independent reasons, Defendant requests that the Court dismiss Plaintiff's Complaint, with prejudice.

### **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff (who is pro per) filed a form complaint ("Complaint") in the Superior Court of California, County of Alameda, on October 16, 2023. The Complaint purports to allege one cause of action for negligence against "United Parcel Services Inc. and jon does 1." See Declaration of Robert D. Prine in Support of Defendant UPS Inc.'s Motion to Dismiss Plaintiff's Complaint ("Prine Decl."), ¶ 2, Exhibit A (Complaint), at Pg. 6.<sup>1</sup> In describing the alleged negligent conduct in his Complaint, Plaintiff simply states "mail sorting facility, premeditated hate crime physical assault W/GBI (jon doe (1)layed and waited) witnessed by facility surveillance system, see attached NLRB charge and Affidavit, Awaiting Oakland police report." *Id.*

To his Complaint, Plaintiff attached several documents including some materials submitted to the Workers' Compensation Appeals Board for the State of California ("WCAB"). Prine Decl., ¶ 2, Exhibit A, Pgs. 10-21. Plaintiff also attached documents relating to a National Labor Relations Board ("NLRB") Charge against UPS, including a Confidential Witness Affidavit wherein Plaintiff identified a March 2022 incident where he was allegedly "assaulted by a supervisor" and injured. *Id.*, at Pgs. 22-25

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<sup>1</sup> On Page 3 of the Complaint, Plaintiff alleges the following causes of action were attached: general negligence, intentional tort, premises liability, and professional misconduct. Prine Decl., ¶ 2, Ex. A, pg. 3. However, Plaintiff only attached one cause of action alleging negligence. Plaintiff also includes general allegations against the other Defendants in the case, but does not plead a single cause of action against them. *Id.*, at Pg. 6.

1 Plaintiff, a Union member, also claimed in his NLRB Charge that UPS violated his  
 2 collective bargaining agreement. *Id.* Finally, Plaintiff also requests compensatory and  
 3 punitive damages of \$10,000,000.00. *Id.* at Pg. 3.

4 On November 22, 2023, Defendant removed this case to the U.S. District Court,  
 5 Northern District of California. Prine Decl., ¶ 3; *See* Docket No. 1. On November 28,  
 6 2023, the parties met and conferred regarding this Motion, but were unable to come to  
 7 an agreement regarding the issues. *Id.* at ¶ 3. As such, Defendant United Parcel  
 8 Service, Inc. requests that this Court dismiss Plaintiff's claims against it with prejudice

### 9 **III. STANDARD OF REVIEW**

10 A motion to dismiss under FRCP Rule 12(b)(6) may be brought when a plaintiff  
 11 fails to state a claim upon which relief can be granted. Per applicable pleading  
 12 standards, it is a plaintiff's obligation to provide the grounds of his entitlement to relief  
 13 based more than mere labels and conclusions; a formulaic recitation of a cause of  
 14 action's elements will not satisfy pleading requirements. *United States ex rel. Chunie*  
 15 *v. Ringrose*, 788 F.2d 638, 643 n. 2 (1986). A complaint must "give the defendant fair  
 16 notice of what the claim is and the grounds upon which it rests." *Bell Atlantic Corp.*  
 17 *v. Twombly*, 550 U.S. 544, 555 (2007).

18 Dismissal is proper where there is either a "lack of a cognizable legal theory" or  
 19 "the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v.*  
 20 *Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). A party's failure to plead  
 21 "enough facts to state a claim to relief that is plausible on its face," warrants dismissal  
 22 of the claim. *Twombly*, 550 U.S. at 570. Further, the court cannot assume that the  
 23 plaintiff can prove facts that have not specifically been alleged. *Country Nat'l Bank v.*  
 24 *Mayer*, 788 F. Supp. 1136, 1139 (E.D. Cal. 1992).

25 Dismissal with prejudice is also proper if, after reviewing the complaint, the  
 26 documents it refers to or attaches, and the information for which the Court takes  
 27 judicial notice, "it is apparent ... that granting leave to amend ... would [be] futile...."  
 28 *Lockman Found. v. Evangelical Alliance Mission*, 930 F.2d 764, 772 (9th Cir. 1991).

1 The Court has no obligation to permit an amendment to the complaint if “it determines  
2 the pleading could not possibly be cured by allegation of other facts.” *Cook, Perkiss  
3 and Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

4 Finally, a “pro se litigant is not excused from knowing the most basic pleading  
5 requirements” or from following court rules. *American Ass’n of Naturopathic  
6 Physicians v. Hayhurst*, 227 F. 3d 1104, 1107 (9th Cir. 2000).

7 As demonstrated below, even when considering the alleged facts in the light  
8 most favorable to Plaintiff, the Complaint: (i) fails to state legal claims for which relief  
9 may be granted; and (ii) is subject to dismissal pursuant to the workers’ compensation  
10 exclusivity doctrine and Section 301 of the Labor Management Relations Act.

#### 11 **IV. LEGAL ARGUMENT**

##### 12 **A. Plaintiff’s Form Complaint Fails to Satisfy the Federal Pleading** 13 **Standards**

14 A cause of action for negligence requires that Plaintiff establish: (1) a legal duty  
15 to use due care; (2) a breach of such legal duty; and (3) the breach as the proximate or  
16 legal cause of the resulting injury. *Ladd v. County of San Mateo*, 12 Cal. 4th 913, 917  
17 (1996). The existence of a duty is a question of law for the court. *Montes v. Young*  
18 *Men’s Christian Assn. of Glendale, California*, 81 Cal. App. 5th 1134, 1139-40 (2022).

19 In *Bible v. GC Servs. LLP*, 2019 WL 4137615 (C.D. Cal. June 6, 2019), after the  
20 defendant removed the case from state court, the Central District dismissed the  
21 plaintiff’s “general negligence” form complaint because it, “d[id] not plead facts  
22 necessary to plausibly establish any claims for relief.” *Bible v. GC Servs. LLP*, 2019  
23 WL 4137615 167104, at \*3-4. In granting the dismissal, the court specifically noted  
24 that the complaint “include[d] no information regarding the claim, making it  
25 impossible for [Defendant] to prepare a defense, or even determine which particular  
26 legal defenses may be available to it.” *Id.* at \*4.

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1 Similarly to the facts warranting dismissal in *Bible*, here Plaintiff's Complaint  
 2 does not facially provide any information regarding his claim. The Complaint merely  
 3 attaches documentation regarding a workers' compensation claims and NLRB charge  
 4 and requires UPS to divine the factual basis for his claim. However, it is impossible  
 5 for Defendant to identify the nexus of this unrelated paperwork to his current claim of  
 6 negligence. Plaintiff vaguely mentions a "hate crime" and "physical assault", but there  
 7 are no allegations pertaining to any duty owed by Defendant or a breach of the same.  
 8 Prine Decl., ¶ 2, Exhibit A, Pg. 6. Accordingly, Defendant cannot prepare a defense or  
 9 determine which legal defenses may be available in response to Plaintiff's Complaint.  
 10 For this reason alone, dismissal is warranted.

11 **B. Plaintiff's Claim Is Also Barred by the Workers' Compensation**  
 12 **Exclusivity Doctrine**

13 Even if Plaintiff had adequately plead a negligence claim (he has not), his  
 14 Complaint should still be dismissed because his lone negligence claim is barred by  
 15 California's workers' compensation exclusive remedy rule. *See Langevin v. Federal*  
 16 *Exp. Corp.*, 2015 WL 1006367, \*29 – 30 (C.D. Cal. Mar. 6, 2015). "[A]n employer is  
 17 liable for injuries to its employees arising out of and in the course of employment, and  
 18 section 3601 declares that where the conditions of workers' compensation exist, the  
 19 right to recover such compensation is the exclusive remedy against an employer for  
 20 injury or death of an employee." *Johns-Manville Products Corp. v. Superior Court*,  
 21 27 Cal. 3d 465, 467-468 (1980)(emphasis added).

22 California courts have repeatedly applied this doctrine to common negligence  
 23 claims allegedly attributable to the employer's negligence or misconduct. *See e.g. Coit*  
 24 *v. Drapery Cleaners, Inc. v. Sequoia Ins. Co.*, 14 Cal. App. 4th 1595, 1605-1606 (1993)  
 25 (holding that a negligence claim would be barred by the workers' compensation  
 26 exclusivity doctrine); *See also Vuillemainroy v. Am. Rock & Asphalt*, 70 Cal. App. 4th  
 27 1280, 1282 (1999) (finding that a general negligence lawsuit was barred by the  
 28 workers' compensation exclusivity doctrine); *Pichon v. Pacific Gas & Electric Co.*,

1 212 Cal. App. 3d 488, 504 (1989) (holding that any claims for damages based on  
 2 termination of employment were barred by workers' compensation exclusivity and  
 3 "Appellant is therefore barred from litigating his causes of action for negligent and  
 4 intentional infliction of emotional distress.")

5 Here, Plaintiff's Complaint alleges he was injured at work; thus, the injury arose  
 6 out of the course and scope of his employment. Beyond that, Plaintiff fails to plead any  
 7 facts demonstrating that UPS' alleged negligence arose outside the normal course of  
 8 his employment. More importantly, as alleged in his Complaint and the attached  
 9 documents, Plaintiff actually filed a claim with the WCAB and pursued a workers'  
 10 compensation claim regarding his injury. Taking the facts of the Complaint, along with  
 11 the attachments and documents presented to the WCAB, as true for purposes of this  
 12 motion only, a workers' compensation claim (which he already filed) is Plaintiff's  
 13 exclusive remedy for Defendant's alleged conduct and the damages that followed.  
 14 Accordingly, Plaintiff's negligence claim should be dismissed with prejudice as it  
 15 would be futile to allow leave to amend.

16 **C. Plaintiff's Claim Is Also Preempted By Section 301 of the LMRA**

17 Finally, Plaintiff's claim should be dismissed because it is preempted by the  
 18 Labor Management Relations Act ("LMRA"). Section 301 of the LMRA preempts all  
 19 state-law causes of action where their evaluation requires interpretation of a labor  
 20 contract's terms. *Miller v. AT&T Network Sys.*, 850 F.2d 543, 545 (9th Cir. 1988).  
 21 Specifically, suits alleging California torts are governed by federal labor law if their  
 22 determination is "inextricably intertwined with consideration of the terms of [a] labor  
 23 contract." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 213 (1985). State law  
 24 negligence claims are preempted if the duty relied on is created by a collective  
 25 bargaining agreement. *See Price v. Molaki Gen. Hosp.*, Civil No. 09-00548 DAE-KSC,  
 26 2010 U.S. Dist. LEXIS 18522, at \*9-10 (D. Haw., Feb. 10 2010) (holding that a  
 27 negligent supervision claim would necessarily require interpretation of the terms of a  
 28 CBA).

1 Plaintiff was a member of the International Brotherhood of Teamsters, Local 70.  
 2 Prine Decl., ¶ 2, Exhibit A, Pg. 22. Plaintiff filed a claim with the National Relations  
 3 Board on or around September 27, 2023.<sup>2</sup> *Id.* In his Confidential Witness Affidavit  
 4 attached to his NLRB Charge, Plaintiff concedes, as he must, that the terms and  
 5 conditions of his employment were governed by collective bargaining agreements. *Id.*,  
 6 at Pg. 23 – 25. Plaintiff also admits that he “was injured at work in March 2022 by  
 7 getting assaulted by a supervisor.” *Id.*, at Pg. 24. He further contended:

8 “The Union is not processing my grievances. After I was  
 9 assaulted last year in March 2022, the Union said that they  
 10 would be assisting me with the assault and would file a  
 11 grievance for me. They never filed that grievance of the  
 assault.”

12 Prine Decl., ¶ 2, Exhibit A, Pg. 24.

13 By filing a claim with the NLRB, Plaintiff acknowledges that the conduct  
 14 alleged in the Complaint fell within the terms and conditions outlined by Defendant’s  
 15 collective bargaining agreements with Plaintiff’s Union. By Plaintiff’s own admission,  
 16 the claims in his suit are inextricably intertwined the terms and conditions of his  
 17 collective bargaining agreement. Plaintiff cannot now bypass the negotiated collective  
 18 bargaining agreements and his NLRB claim, and seek relief in federal court, thereby  
 19 negating the entire body of statutory law enacted via the LMRA. Accordingly, for this  
 20 additional reason, Plaintiff’s claims are preempted and cannot be cured by providing  
 21 leave to amend the Complaint.

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 24 <sup>2</sup> Notably, Plaintiff’s Charge alleges, “the Employer discriminated against employee Nicholas  
 25 Stephens by failing to provide the employee with temporary disability after terminating the employee  
 26 in retaliation for or in order to discourage protected concerted activities.” Prine Decl., ¶ 2, Exhibit  
 27 A, Pg. 22. To the extent Plaintiff would amend his Complaint to allege a retaliation claim based on  
 28 his “concerted activities”, this would be preempted by the NLRA. *See* 29 U.S.C. § 157; *See also*  
*San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959) (“When it is clear or may  
 fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the  
 [NLRA], or constitute an unfair labor practice under § 8, due regard for the federal enactment requires  
 that a state jurisdiction must yield.”)

1 **V. CONCLUSION**

2 For the foregoing reasons, UPS requests the Court dismiss Plaintiff's Complaint  
3 in its entirety with prejudice.  
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5

6 Dated: November 29, 2023

DINSMORE & SHOHL LLP

7  
8 By: /s/ Robert D. Prine  
9 ROBERT D. PRINE  
10 Attorney for Defendant,  
11 UNITED PARCEL SERVICE, INC.  
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**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on November 29, 2023, a true copy of this document was served by electronic mail upon all registered CM/ECF users, and by United States Postal Service upon all non-registered CM/ECF users in this case as indicated below:

Nicholas Stephens  
19983 Forest Ave., Apt. 1  
Castro Valley, CA 94546  
T: (510) 586-4420  
E: [nickstephens120@yahoo.com](mailto:nickstephens120@yahoo.com)

I declared under penalty of perjury under the laws of the United States of America that the above is true and correct.

/s/ Robert D. Prine  
Robert D. Prine